REPORT OF THE

COLLECTIVE BARGAINING STUDY COMMITTEE

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Final Report

House Concurrent Resolution 33, Sixty-third Iowa General Assembly, First Session, directed that a committee be appointed to study the necessity and desirability of enacting legislation providing a framework within which public employees in the state of Iowa could bargain collectively concerning the terms and conditions of public employment and providing a method of dissolving disputes in bargaining. The Resolution established a fifteen-member Study Committee to be composed of two members of the Senate appointed by the President of the Senate, two members of the House of Representatives appointed by the Speaker of the House, two members appointed by the Governor to represent the public at large, and the remaining nine members appointed by state agencies and associations to represent the interests of such agencies and associations.

The following persons were appointed to serve on the Study Committee in accordance with House Concurrent Resolution 33:

President of the Senate appointees:

Senator Lee H. Gaudineer, Des Moines
Senator Edward E. Nicholson, Davenport

Speaker of the House of Representatives appointees:

Representative Floyd H. Millen, Farmington
Representative Charles H. Pelton, Clinton

Governor appointees:

Professor William Buss, Iowa City
Mr. Cecil Reed, Cedar Rapids

State agencies and associations appointees:

Mr. Maurice E. Baringer, Des Moines, representing the Iowa Executive Council
Mr. George Brown, Des Moines, representing the Iowa State Education Association
Mr. Don E. Bruce, Des Moines, representing the International Brotherhood of Teamsters
Mr. John H. Connors, Des Moines, representing the Iowa Federation of Labor
Mr. Al Meacham, Grinnell, representing the Iowa Merit Employment Commission
Mr. George C. Parks, Iowa City, representing the Iowa Federation of Labor
Mr. Ernest F. Pence, Cedar Rapids, representing the Iowa Association of School Boards
Mr. Val Schoenthal, Des Moines, representing the League of Iowa Municipalities
Mr. Leonard Sheker, Callendar, representing the Iowa State Association of Boards of Supervisors

Mr. Reed received a federal appointment to a post in the Federal Manpower Administration shortly after his appointment to the Study Committee by Governor Robert D. Ray. He resigned his Study Committee appointment and no appointment was made to fill the vacancy created by Mr. Reed's resignation.

Study Procedure

The organizational meeting of the Study Committee was held on August 15, 1969 at which time Representative Charles H. Pelton was elected Committee Chairman and Senator Lee H. Gaudineer was elected Committee Vice Chairman. Following initial review of the subject matter which indicated the complexity of the issues involved in the study, the Study Committee agreed to formulate a list of priorities and base the direction of the Committee upon these areas of primary concern.

The members agreed that the Committee should hear persons knowledgeable in the field of labor-management relations and many persons were invited to appear before the Study Committee.

On January 5, 1970, the Study Committee met to adopt a final report and its recommendations.

Recommendations

1. The Committee strongly believes that legislative action must be taken to resolve a growing problem in public employment in Iowa. Disruptions in public service are unfortunate and any legislative action would have the elimination of such disruptions as one important goal. But getting to the causes of employee dissatisfaction is a more fundamental goal. The citizens of the state of Iowa are far more likely to suffer from a reduction in quality of public service than from a complete cessation. The Committee does not believe that collective bargaining is a panacea for all employment relations problems in the public service, but it does believe that collective bargaining can open a very important channel of communications between public employers and their employees. The truly remarkable number of state collective bargaining statutes and local ordinances (plus two federal executive orders) put into effect during the past few years demonstrates that the problem is by no means limited to Iowa. These legislative and executive events also reflect the widespread pattern of affirmative response to the problems. The problem is made particularly acute in Iowa by reason of the still unresolved doubts as to whether a public employer even has the power to bargain with a respresentative of its employees if it chooses to do so.

(1) The Committee UNANIMOUSLY agrees that a public body's power to bargain should be made clear by appropriate legislation;

that public employers and their employees should be enabled to engage in collective bargaining.

2. As an important pre-condition of collective bargaining,

(2)(a) public employees should have the right to form, join, or participate in an employee organization

which has, as one important purpose, representing employees in collective bargaining. It is very likely that such a right is guaranteed by the United State constitution. The Committee does not believe that such a right is generally challenged or interfered with by public employers in Iowa. The right should be made clear by statute, as should the corollary right--that

(b) public employees should also have the right to refrain from engaging in such activities.

Organizational participation should be the free choice of every public employee.

3. The Committee also believes that

(3) public employees should have the right to engage in collective bargaining through representatives of their own choosing.

Recognition of this right creates a corresponding duty in the employer. If a group of employees desires to engage in collective bargaining, the public employer is obligated to bargain with them.

4. Bargaining does not mean that the employer must agree or make concessions. The employer and the employee organization would both be expected to make good faith attempts to reach a joint agreement, but the employer is not expected to agree to conditions of employment which it regards as contrary to the public interest. The Committee believes that the statute should provide, expressly, that

(4) collective bargaining requires a good faith attempt to reach mutual agreement concerning conditions of employment but with no obligation to make concessions.

5. The Committee believes that the principle of "exclusive representation" should govern. This principle reflects accepted patterns of majority rule, and, in the Committee's judgment, it is the only satisfactory and workable system for employers and employees alike. The statute should provide, then, that

(5) a majority of the employees in a particular employee group or "unit" may choose an employee organization to represent

all of the employees in that unit.

6. The Committee believes that an administering body is necessary to facilitate an orderly determination of the employees' bargaining representative and to assist the parties in resolving any impasse in bargaining when the parties are unable to provide the means for resolving it themselves. Such an agency would also help the parties by studying problems in public employment relations and disseminating relevant information. Therefore,

(6) an administrative agency should be established to assist in the determination of bargaining representatives, the resolution of bargaining impasses, and the performance of related functions.

The Committee believes that this agency should be composed of three neutral members responsible solely to the public. All three members should be chosen by reason of their knowledge, ability, and experience in the field of labor-management relations, although only the Chairman need be on a full-time basis.

7. Along with the principle of "exclusive representation," it is essential that there be a means for determining the unit in which a majority is to be chosen, a means for determining a majority, and a means for the majority to change from time to time. To meet the first of these requirements, the Committee recommends that, under the statute,

(7) the administrative agency be authorized, when needed, to determine the unit appropriate for bargaining for various public employees on the basis of criteria established in the statute.

The Committee has recommended unit criteria designed to achieve several goals--the units would group together employees who share interests, working conditions, and the like; there would be sufficiently few units within any public body that bargaining would not become burdensome to the employer; the units would tend to result in an agreement with a public employer who was empowered to perform or make effective recommendations concerning agreed upon terms; and the units would facilitate establishing consistent terms of employment among employees who should be treated alike.

8. The administrative agency should also be authorized to conduct representation elections. The Committee believes that such elections should be held in all cases where a substantial question of representation exists; elections should not be conducted where there is no showing that any employee organization commands significant support among the employees, nor where there is no significant doubt that a particular organization represents a majority of the employees. Accordingly,

(8) Elections should be held only where a substantial number

of employees show an interest in being represented by a particular employee organization and either the employer or a substantial number of other employees questions whether that organization represents a majority of the employees.

The statute would provide for certification of the employee organization chosen as representative by a majority of the employees.

9. Similarly, where an employee organization has been designated as the representative of certain employees,

(9) Elections should also be held where a substantial number of employees show an interest in no longer being represented by an organization previously certified as their exclusive representative.

With respect to elections for establishing or terminating exclusive representation, there should be a reasonable interval of time during which no elections are held which interval may be extended to a maximum of two years by the existence of a collective bargaining agreement.

10. The Committee also believes that the statute should provide, expressly, that

(10) the exclusive representative is required to represent fairly all employees within the unit of represented employees.

The exclusive representative should not be allowed to discriminate against employees who did not support it or employees who might be in any other disfavored minority within the unit.

11. It is also important that, despite the exclusive representation,

(11) every employee should have the right to present grievances to his employer.

The adjustment of any such grievance should be consistent with the collective bargaining agreement and the bargaining representative should be entitled to be present at such adjustment.

12. By establishing a system of collective bargaining, it is hoped and expected that any differences concerning conditions of employment will be resolved by the representatives of the public employer and public employees. Consistent with these assumptions, the Committee believes that the primary burden for resolving any impasse in bargaining should fall upon the parties themselves. This means that the parties should have the primary responsibility for setting up procedures to resolve any impasse and that they

should pay for any impasse procedures. Only if the party's impasse is so great that they are unable even to agree upon mediators and fact finders to help them resolve the impasse should the administrative agency intervene. It is desirable, in any circumstances, for the agency to make available any services or facilities which the parties themselves agree to utilize. The Committee, therefore, recommends that

(12)(a) the public employer and employee organization representing the employees should resolve any impasse in bargaining through mediators and, if necessary, fact finders selected by them;

(b) the administrative agency should maintain separate lists from which the parties to an impasse may, in their discretion, chose mediators and fact finders;

(c) the cost of all impasse procedures shall be borne equally by the parties.

At least in certain circumstances, it is arguable that binding arbitration is the only effective means of resolving an impasse and avoiding a strike. After giving careful consideration to this position, the Committee has decided, because of the legal and practical problems related to binding arbitration, that it would be preferable to exclude it from any legislation at this time. The proposed statute does not require there be arbitration but does allow public employers and employees to utilize binding arbitration to resolve a bargaining impasse if they voluntarily chose to do so.

13. Certain types of conduct are incompatible with a system of collective bargaining between public employers and employees. The most obvious type of unacceptable conduct is the refusal to bargain at all--by either the employer or the employee organization representing the employees. In addition, a system of collective bargaining seems inconsistent with conduct, by the employer or the employee organization, which interferes with an employee's participation in or his support of an organization; or which penalizes him for doing so; or interferes with or penalizes an employee for not doing so. Accordingly the Committee recommends that

(13) it should be an unfair practice for an employee organization or a public employer to fail to bargain in good faith or to interfere with, restrain, coerce, discriminate (or cause to discriminate) against employees for exercising their rights created by the statute.

While it has been common, under other private and public bargaining statutes, to give investigatory, adjudicative, and remedial powers over such unfair practices to an administrative agency, the

Committee has not done this. Instead, the Committee has made such practices actionable in the district courts. This decision was a result of the Committee's belief that prompt and equitable relief could be obtained in the courts and that is was desirable to avoid the added expense of placing these responsibilities in the administrative agency.

14. The controversial nature of the strike question was not absent from the Committee's deliberations. As most people do, the Committee unanimously agreed that disruptions in public service are always undesirable and that strikes are to be avoided if at all possible. The Committee also recognized that the viability of collective bargaining without the possibility of a strike remains an unknown. The Committee has recommended that

(14) in general, strikes by public employees should be prohibited but that a limited right to strike should exist for "non-critical" public employees (a) after all impasse procedures have been exhausted, (b) a cooling-off period has expired, and (c) so long as the strike is not contrary to the public health, safety, or welfare.

There are several advantages to this proposal. First it very narrowly limits the right to strike. Second, it extends the principle of a "right" to strike to some public employees, thus hopefully eliminating the feeling, which many of them have, of being "second class" citizens. Third, it retains some pressure on the parties to avoid being intransigent at the bargaining table. Fourth, it does not permit strikes under any circumstances where a court finds that the strike is or will endanger the public health, safety, or welfare.

15. Perhaps even more important than the question whether all strikes are to be outlawed is the question of penalties to be imposed when an illegal strike occurs. The Committee believes it is extremely important to stress that strike penalties are designed to prevent and terminate strikes, not to punish the strikers or their organizations for purely vindictive reasons. A strike is a serious matter and a public employee strike a very serious matter. The Committee believes that the best answer to an illegal strike is an injunction, issued after appropriate safeguards, followed if necessary by contempt penalties. These penalties may be as severe or as mild as appears necessary to terminate and prevent recurrence of the strike. The penalties are left largely to the court's discretion, but the statute requires the court to consider all relevant circumstances including any harm caused by the strike and any responsibility of the public employer for the occurrence or length of the strike. The Committee also believes that strikers may be subjected to appropriate disciplinary action, including suspension or discharge, for their part in an illegal strike. Based on these considerations, the Committee recommends that

(15)(a) an illegal strike should be enjoined and, if it continues, subject to contempt penalties in the discretion of the court which shall take into account any harm caused by the strike and the responsibility, if any, of the public employer;

(b) employees who participate in an illegal strike may be subject to appropriate disciplinary action.

MINORITY STATEMENT BY THE REPRESENTATIVE OF THE IOWA ASSOCIATION OF SCHOOL BOARDS (ERNEST F. PENCE)

The Iowa Association of School Boards supports the right of public employees to collectively negotiate with respect to salaries and other economic matters and that legislation should be enacted to implement this right.

It is felt, however, that public education requires different personnel employment procedures and practices than those required by other public employees. This is borne out by our support of previous legislation dealing with teachers only--such as Senate File 648.

Therefore, the Iowa Association of School Boards cannot support the proposed umbrella bill as approved by the majority of the committee without incorporating certain alternatives as follows:

1. The association strongly favors prohibiting strikes or sanctions and therefore would urge the incorporation of the following section:

"It shall be unlawful for an employee or employee organization to induce, instigate, authorize, ratify, or participate in a strike against a public employer or engage in any concerted refusal to render service or to impose sanctions against any public employer including but not limited to the causing or encouraging of anyone not to seek employment by a public employer."

2. The bill should also provide for penalties for strikes or sanctions in addition to the injunctive remedy in the following way:

"Any employee organization which violates the provisions of the Section dealing with strikes may be denied by the public employer the right to be certified as an exclusive representative for a period of 24 months following the date of such violation. However, such remedy shall not be available to the public employer if it has concurrently been guilty of any violation of Section 15."

3. Considering that school district problems are local, there is no need for a state agency. Therefore, as an alternative, the Senate File 648 approach which provides for local mediators and

fact finders should be implemented as a substitute for the sections providing for a state agency.

4. The School Board has the final responsibility in decision making and therefore the statute should in no way provide for or authorize compulsory arbitration procedures.

MINORITY STATEMENT OF THE REPRESENTATIVE OF THE IOWA STATE ASSOCIATION OF BOARD OF SUPERVISORS (LEONARD SHEKER)

The Iowa State Association of County Supervisors recognizes and supports the rights of all employees to individually or collectively negotiate with respect to salaries, other economic matters or working conditions; but with reference to public employees and the services they render, special rights and procedures should be considered to safeguard their actual employers who are the citizens and taxpayers of the State of Iowa.

Because the public employees, as their title indicates, are working for the public in the performance of governmental services, and because the government is not in any business nor providing any services that are not "essential", all public employees, therefore, would be providing "essential services" or the governmental agency would not, nor should not be providing them in the first place. The services supplied by public employees are generally provided exclusively by them and are considered essential. Substitutes for such services cannot normally be found as our society does not provide alternate sources of supply for these essential services, i.e., police and fire protection, schools, state institutions, etc. For these reasons, it is imperative that interruptions in these essential services must be prevented.

OUR ASSOCIATION TAKES A STRONG POSITION AGAINST THE MANDATORY BARGAINING REQUIREMENT IN THE PROPOSED COLLECTIVE BARGAINING IN PUBLIC EMPLOYMENT BILL.

Remembering the special nature of collective bargaining within the public sector, our first and most important criticism of the proposed Bill is that it makes it mandatory that the public employer bargain with the employee organization. Such mandatory legislation requires one party to bargain upon the request of the other. We concur with the minority statement of the League of Iowa Municipalities and the Position Statement of the Iowa Association of School Boards in their opposition to mandatory bargaining. It seems only logical that the Iowa public, citizens, taxpayers, public employees and elected officials alike would be better served by the suggested and proposed permissive legislation which would allow the public employers, who are always subject to some political pressure at the polls, to bargain and negotiate with the public employees, but not make it mandatory upon them to do so. Our Association agrees with the rights of the public employees or employee organizations to meet with, negotiate, and bargain

with the public employers, and, perhaps as a matter of practice, we as public employers have proven this statement by such meetings with employee groups.

Considering the bill itself which contains the mandatory bargaining requirement, the merits of that particular bargaining should be considered, Section 11 thereof seems to contain the methods for selection and direction of the employee's organization and determination of the appropriate unit. The statutory guidelines for determining the "appropriate unit" appear vague and confusing. It is reported that this particular problem presents countless issues in the private industry sector of labor-management relations, and such will be greatly magnified in the public arena. We are told that the National Labor Relations Act contains specific exclusions for professionals, plant guards, craft units, etc. In the public sector with so many professionals (i.e.: university professors, school teachers, hospital and police department employees), all of which are guards, so to speak, these problems are extremely vast. The proposed Bill appears to us to be deceptively simple on this point. The bill does finally describe the election and certification procedure, but we doubt that any public agency is, or will in the foreseeable future, be qualified to administer the act.

PUBLIC EMPLOYERS ARE POLITICIANS NOT LABOR LAWYERS.

Public agencies are frequently managed by elected bodies of councilmen, supervisors, etc., who are not professional managers, but who are constantly subject to the public scrutiny and criticism. To expect them to engage in, and be even moderately successful, the hard in-fighting that must and does take place in a representative election contest with the same vigor as the private employer is fallacious. They simply will not be able to engage in their contest with the same background, personnel, statistics, money or zeal that the employee organization professionals can and will bring into the fight. This is a rigged contest and the public's elected officials as well as the public employees will be sitting ducks for the paid organizers.

Our Association takes the position that the public employer be "permitted" to bargain with the designated employee organization because to impose on public employers the mandatory obligation to bargain with so-called selected organizations causes gross inequities. The elective process provides a remedy against public employers who abuse the bargaining procedure.

PUBLIC EMPLOYEE STRIKES ARE UNACCEPTABLE.

The proposed bill is significantly defective in the area of prevention of strikes by public employees. Section 15 of the Bill sets forth the duty to engage in collective bargaining on subjects akin to the bargaining in the private industry sector and

attempts to define "good faith" bargaining. The Bill describes that the first step in the bargaining process is to attempt to reach an agreement with respect to what the parties shall do in the event they fail to reach an agreement; and that they may agree that the matter be submitted to binding arbitration. While the Bill does provide for a machinery in the absence of agreement to solving an impasse by the appointment of a mediator and/or a fact finder, Section 21 of the Bill provides for public employee strikes with limitations. We recognize that public employment strikes, and on the other hand public employment lockouts which constitute the employer's counter weapon to the threat of a strike, are equally unthinkable. The Legislature should consider a Bill prohibiting both strikes and lockouts concerning public employees which peril any of the three public interests of health, safety and welfare. To allow for public employee strikes where the public employee is, by its own definition of "public employee" engaged in services provided by government essential to the public citizens, and taxpayers public health, safety and welfare, is unthinkable. Governmental agencies are, either directly or indirectly, controlled by the state's citizens through the ballot box. Serious abuses of public employers can be corrected either by the employees seeking work with private industry or by corrective procedures through elections, but strikes or work stoppages of essential services provided by government should not and cannot be allowed.

The proposed Bill seems to provide that strikes by public employees not defined as "critical services" are permitted once the impasse procedures established by agreement of the parties or by provisions of the act are exhausted and for more than ten days, when a strike is called by an employee organization certified or recognized as the exclusive bargaining representative of the majority of the public employees in the appropriate unit and it is called in support of a bargaining demand and not inconsistent with public health, safety and welfare. Our Association does not conceive of a possible strike situation consistent with the public heath, safety and welfare irrespective of our previous statements regarding the government's supplying essential services and the exhaustion of impasse procedures, organization calling the strike or demand behind it. The allowance of strikes in the Bill as proposed, Section 21, subparagraph 4, denotes the strike is consistent with the public health, safety and welfare. Our Association takes the position that public employee strike inconsistent with any one of these three standards should be enough to make it illegal, and certainly it should not be incumbent to show that such a strike would be inconsistent with all three at the same time.

PERMISSIVE BARGAINING WILL WORK.

Illegalizing of bargaining with the public employees through permissive bargaining legislation could and would eliminate the necessity of a great quantity of the proposed Bill and if the public managers are wrong, the record will certainly be open to public view and either the public managers or those who appoint

them will be subject to election by the public who will weigh their sins at the poll.

The Bill calls upon Iowa's District Court Judges to act in these matters. Very few or any of these judges had any labor relations work in the private practice or in their tenure on the bench have been called on to decide such matters. The act will accelerate these cases ahead of all but criminal cases, putting an added burden on already clogged and delayed Court dockets and calendars. The public officials and public employers do not have available in Iowa trained legal counsel experienced in the labor relations field. But we recognize the unions will come forth with professional and prepared union organizers and legal counsel. This appears unfair to Iowa's citizens and taxpayers as much on its face as it will be in practice.

WHAT SAFEGUARDS FOR PUBLIC AND OFFICIALS.

Stern remedies to individual employees, labor organizers or employee organizations who violate the terms and intent of the act should also be considered. We are advised that New York has a law that penalizes the individual employee that goes on strike, it does not deal with the organization as such, and if the employee is rehired he is considered as a separate unit and can have no increase for three years and serves as a probationer for five years. An alternative is to provide for decertification of the offending labor organizer permanently or for a period of years. Such would provide a substantial deterent to the organization, but to be effective the Bill should eliminate the possibility of back door "deals" to restore the bargaining relationship.

If it is a statute to absolutely bar a strike, shouldn't there be some means of solving the impasse? The Bill does not provide for building compulsory arbitration, which is sometimes criticized as encouraging extreme demands and rigid bargaining, or encouraging "ask for all you can and hold for these demands as you stand to get a chance of getting part of it". Such also delegates the responsibility of public management to outsiders. The elected and appointed managers could avoid solving hard decisions and let outsiders do their dirty work. The previously sighted minority reports or statements seem to have valid criticism in questioning the public employers' authority to delegate such powers. Arbitration may be good for determining grievances under existing contracts, but such is less suitable for determining negotiable terms for future contracts. It is urged that mediation and fact-finding processes without compulsory settlement are the best methods for solving these suits. What do we do when they fail? To strike, to our organization, is an unacceptable end result, one that other states much more labor oriented than Iowa have not accepted. We do not believe that we in Iowa need to accept this result either, and we believe there simply shall be no strikes by the public employees. If we have permissive bargaining with mediation followed by fact-finding fol-

lowed by publicity of the findings and recommendations, we will provide public employees with protection. Our elective process is a great protector of rights.

MINORITY STATEMENT BY THE REPRESENTATIVE OF THE LEAGUE OF IOWA MUNICIPALITIES (VAL L. SCHOENTHAL)

This Minority Statement is in four parts. Although it is lengthy and notably contrasts to the exceptional brevity of the majority report, it is submitted without apology on that score because it is believed a subject of such complexity cannot be adequately treated or compressed into "a nutshell."

Part I deals with the basic policy questions whether a "mandatory-comprehensive" or "permissive-voluntary" system is preferable at this time. Part II presents questions within the context of the mandatory-comprehensive system and bill proposed by the majority report. Part III comments on certain salient defects of the Study Committee's composition, performance and resulting work-product. Part IV sets forth recommendations.

PART I: THE MAJOR ISSUE: A "Mandatory-Comprehensive" or "Permissive-Voluntary" System?

At the time of enactment of House Concurrent Resolution 33 by the First Session of the 63rd General Assembly there was overhanging the entire area of collective bargaining in public employment a most important, but unresolved, question: Whether a public employer even had the power to bargain with a representative of its employees in the absence of express statutory authorization.

That very fundamental question had arisen first through a series of Opinions of the Attorney General, the latest in 1961, declaring that the power could not be implied. It had been brought to the point of immediacy by the pendency on appeal to the Iowa Supreme Court of the case of State Board of Regents v. Local 1258, Packing House Workers. In it the Black Hawk District Court had held that the power was implicit in the general statutory directions and authorizations to perform all other acts necessary and proper for the execution of the express powers to hire employees, fix compensation and expend moneys.

The uncertainty posed by that pending question and its deeply unsettling effect on bargaining even between those ready and willing to do so was widely regarded as intolerably detrimental to the best interests of public employees, public employers and the public itself. It was undoubtedly a major impetus for the creation of the Study Committee and continued to be throughout its deliberations, which were concluded prior to the Supreme Court's decision on February 10, 1970.

In fact the Supreme Court affirmed the District Court's inference of the power to bargain. In the meantime, however, a majority of the Study Committee had concluded that the existence of such power should not only be made clear but that it should be statutorily extended to a duty to do so when requested by a representative designated by the majority of employees in an appropriate bargaining unit. The establishment of that duty as well as the detailed regulation of the determination of representatives and all phases of the bargaining relationship are recommended in the majority Report and proposed bill.

It is on that major issue that this minority takes basic exception for the following reasons:

A. Complexity. First and fundamentally, it is noted as a basic objection to a mandatory bargaining requirement that it almost inevitably and inexorably necessitates the very kind of comprehensive and complex implementing legislation and enforcement procedures which the majority has indeed found it necessary to provide. Thus, while the question seems innocuous whether anyone could be opposed "in principle" to requiring a public employer to bargain with a representative freely chosen by a majority of the employees in an appropriate bargaining unit, it is, in fact, a very "loaded" question with the broadest implications which are not at all apparent without careful examination. It is one to which an overly hasty affirmative response leads, almost inevitably, to further complications which are not at all apparent on cursory consideration; namely:

(1) If such bargaining is to be required, there must, of course, be a fair and objective means for determining whether and, if so, which employee organization is the majority's choice; so there needs to be an election procedure and some disinterested neutral party to conduct it and see that all concerned play fair in their preelection tactics and that only eligible members of the appropriate unit vote.

(2) But what is the "appropriate unit" and who is to decide that?

(3) And, if the "duty to bargain" is to be "meaningful," must there not be a requirement that both parties "bargain in good faith"? But what does that mean precisely and what and where is the line between "hard bargaining" (bearing in mind--as the Committee would provide--that "Collective bargaining does not mean that the employer must agree or make concessions") and "bad faith"? And who is to decide that? After what procedures and assignments for charges, investigation, complaints, and prosecution? And shall there be an appeal procedure? (The Committee proposal is to attempt to avoid much of the procedural and administrative problems which have so often entangled the parties and the National Labor Relations Act by deferring it to the Iowa District Courts. However, an obvious disadvantage of that course is to lose at least

such centralized "expertise" and policy as a single administering agency could achieve and to thrust on judges (most of whose prior private practices and judicial experience have not encompassed this complex concept in any depth) the task of developing and applying a new "common law" as to the "unfair practice" of "failing to bargain in good faith.")

(4) In addition to that most complex unfair practice, what about the others prohibited, such as interfering with, restraining, coercing or discriminating against employees in their rights, etc.?

(5) Assuming the best of good faith bargaining, what if the parties are nonetheless unable to agree? Must there not then be "impasse procedures," including mediation, fact-finding and arbitration? Who decides when and how and who shall do that?

(6) What if the employees later want to change their minds? Must there not then be procedures, machinery and staff to handle "decertifications," etc.?

(7) And so on . . . .

The foregoing is not intended to be either facetious or derisive. It is, rather, believed to be a fair and accurate analysis of, and confrontation to, the numerous "complications" which are necessarily entailed (as witness the Committee's proposals) in the mandatory bargaining approach which the Committee majority has recommended.

B. Expense. Completely over, above and in addition to the immediate, direct expense of creating and staffing the new agency which would be needed to administer this complex statute, the much larger part of the "iceberg" is represented by the inevitable expenses to all public employers in staffing and preparing themselves to try to meet the many demands and duties which would be imposed on them.

Although some such expenses will be attendant even on the preparation for and participation in voluntary bargaining, it is submitted that the much greater informability and simplicity of that alternative would enable (and encourage) both parties to forego resort to imported experts and to concentrate on finding solutions rather than "issues" or getting entangled in the interpretations of a new and very complex statute.

C. Effect on Citizen Participation. An inevitable effect on the complexity and rigidity of the mandatory-comprehensive approach would be vastly to increase the complications of public administration. To the considerable extent that elected officials would be required at least to oversee and often and eventually to participate in those processes, those demands would be seriously deterring to the availability and willingness of those elected and part-time

citizen-administrators on whom most public employers are dependent for leadership and public administration.

D. Superfluous. Probably the central question is whether the method of dealing with public employees and the ultimate agreements made with them as to the terms and conditions of their employment should reflect (a) the will of the majority of the local citizenry or (b) an approximation of abstract "justice" as determined, in cases of disagreement, by outside, neutral arbiters.

On this point it is submitted that in most Iowa communities the citizens know one another and their public managers well enough (and vice versa) that everyone has "a pretty good idea" of what the will of the local majority is as to what they want done about whom they hire and on what terms and at what costs (and taxes). At least, if that majority will is misconstrued--or opposed--the remedy is quickly and readily at hand at the next election.

Specifically, in each and every community the separate and overall decisions must be made repeatedly whether to "go first class" (and pay what it costs) or to opt for less in quantity and/or quality to achieve economy. The heart issue then is: Whether to leave these decisions in the hands of the citizens acting through their chosen representatives or to delegate them substantially to outside neutrals whose standards would depend on their appraisal of what seems "right"--to them.

E. Now? Being sure that the mandatory-comprehensive alternative would not be an unmixed gain or improvement, the immediate question for decision is whether it is clearly necessary or desirable now before the voluntary-permissive approach has been given a fair trial and an opportunity to demonstrate whether it can or will suffice. It is submitted that at least until and unless its inadequacy has been demonstrated, it would be precipitous to lurch through it to the obvious disadvantages of the mandatory-comprehensive system.

PART II: THE PROPOSED BILL

For the reasons set forth in Park I above the CENTRAL THESIS of this minority statement is that the mandatory-comprehensive alternative proposed by the Committee majority is neither necessary nor desirable at this time. The following comments and criticisms are directed at specific parts of that proposal. It cannot be emphasized too strongly, however, that they are made only in the context of a seriously challenged assumption that any such comprehensive legislation and regulation is needed or should be enacted now.

Sequentially, the major issues will be considered first and then some of the technical questions later.

A. Major Issues.

1. Coverage. Although it is not specifically discussed in the Report, a major question considered was whether, if there were to be such legislation, there should be a single "omnibus" bill for all public employees or separate bills for different groups (such as teachers) or levels, such as state and local. Within the Committee, the only members strongly opposing a single "omnibus" bill for all public employees were the representatives of both the I.S.E.A. and the Iowa Association of School Boards who urged that because of their peculiar employee problems and traditionally different approach to "professional negotiations," certificated educational personnel should be differently and separately covered.

Obviously, if the simple permissive alternative recommended herein were adopted, it would not require separate treatment for anyone. Within a comprehensive-mandatory framework, it would not seem objectionable to permit this distinctly severable group to be separately regulated if the only employees of schools were teachers. But they aren't.

Consequently, the obvious and serious disadvantages are that this would result (1) in school administrators having to operate under two separate laws and (2) in there being two quite dissimilar statutes and bodies of law developing under separate administrations for public employees in different categories. The pertinent inquiry is then whether the essential problems involved are indeed "that" different and it is submitted that they are not.

Concerning the proposed delay in effective date for state employees, it is noted again that this would be automatically possible and self-regulating under the permissive approach. If a mandatory-comprehensive bill were to be enacted, it is probable that some such delay would be necessary to enable effective coordination with the merit system. However, it would be only fair that the State, as the pre-eminently largest public employer in Iowa, should be covered by whatever law is extended to (or imposed upon) the other levels.

2. Exclusive Representation. During and at the conclusion of the Committee's deliberations, there was consensus that an employee organization chosen by a majority of the employees in an appropriate unit should be the "exclusive representative" for all employees in that unit (Report #5), with an obligation to do so fairly and without discrimination against nonmembers (Report #10), provided that individual employees should have the right to refrain from membership (Report #2(b)) and each be allowed to present his own grievances so long as the bargaining representative were entitled to be present (Report #11).

Subsequently, a majority of the members of the Supreme Court in the Regents case held that such exclusive representation would--unlike the power to bargain, which they found--not be infer-

able or proper without express statutory authorization. It is, therefore, clear that if this power is deemed to be desirable, such an enactment to enable it would be necessary.

Before providing it, however, it would be appropriate to recognize that the principle involved, which is followed under the National Labor Relations Act in the private sector and by most (although not all) of the states which have enacted public employee bargaining statutes, is not preordained. It is, rather, based on the purely pragmatic conclusion that the advantages of dealing with a single representative are worth the resulting loss of minority rights.

Under the alternative, which would be possible without legislation, employee organizations would be able to represent their own members only. It is submitted, however, that the practical effect of this would not be as great as it might seem: First, in the great majority of situations there is only one organization involved and the problem of dealing with "rivals" is not even presented. (If it is, the employer would retain the decision whether to deal with one or both and on what terms.)

Second, since it would be most impracticable (and probably illegal) to establish different basic terms of employment for the bargaining representative's members and others, the practical effect would be that such terms as were agreed to for its members would, in operation, be extended to all. Although this would tend, in effect, to approximate the exclusive representation which the Court said could not be accorded formally, it would be legal because of the vital difference that the final action taken by the public employer would be its own unilateral action, <u>after</u> completion of its bilateral negotiations with the majority representative and such, if any, other representatives or individuals as it wished to confer with. And thereafter, in administering the final arrangement, the majority representative would continue to represent only those designating it for that purpose.

3. <u>Strikes</u>. The issues which engendered and received by far the largest part of the Committee's time and attention were the insistence of a majority to statutorily sanction a "limited right to strike" for "noncritical" public employees (Report #14) and to import a "comparative blame" concept and limitation into the courts' powers to deal with those engaged in illegal strikes (Report #15).

If unadulterated cynicism is pardonable, the strong impression of this dissenter is that the primary purpose of most of those espousing those sections was not the expectation of their acceptance by the Committee or, much less, the General Assembly. Rather it is believed and submitted that they were presented as "lightning rods" or "red herrings" to divert the steam and energy of those considering the whole package and entrap those diverted

into the logical (?) corollary of their indignant declarations that they would "never" vote for a report or proposed bill so long as either contained those drastic provisions.

If that was the strategy, it must have surprised those using it (and is certainly a reflection on the collective judgment of the Committee majority) that it prevailed there and became available to serve those same ulterior purposes before the General Assembly.

In any event, since those very drastic provisions did prevail and are still being urged, it seems purposeful to note here their deep and obvious defects:

a. The "Limited Right to Strike." The primary defect and fallacy of extending to any public employees the right to strike under any circumstances is that it is contrary to the fundamental proposition that governmental processes and decisions, being essentially political rather than economic in nature, should not be subjected to or decided on the basis of any form of duress or coercion.

As a matter of pure practicality the vagueness and imprecision of the allowable exceptions would make them open invitations to misunderstanding, tragic miscalculation and abuse. By failing to maintain the clarity and certainty of the complete prohibition, which is fully established and recognized at common law and has been adopted almost universally in those states adding statutory prohibitions (only the Vermont municipal employees law is comparable!), it imports a "crapshooting" element of uncertainty into an area which could have the most serious consequences for all concerned.

On a lesser level it can be observed that unless a strike has some coercive effect it is essentially pointless and valueless so that from a practical standpoint the majority's qualifications produce a theoretically useless right. (A mental image arises of a gardener on strike in his public garden where no one cares and, hence, it does him no good.) But even those cases could be more effectively served by informational picketing without the risk of any serious consequences to either the employee or the public through miscalculation, misunderstanding or "escalation."

Pragmatically it is submitted that the best laws are clear ones under which the possibilities for error, misunderstanding and needless litigation are eliminated. As with the highly comparable matter of precluding strikes and lockouts in the private sector during the terms of contracts between negotiations, it is in fact a service and a favor to all concerned simply and clearly to provide that there shall be none--with no exceptions, "if's, and's or but's."

b. Penalties for Illegal Strikes. The majority proposal

(Report #15) would introduce the prospect for reducing or avoiding contempt penalties for failure to comply with a court's injunction of an illegal strike if the public employer were found to have "any responsibility. . . for the occurrence or length of the strike."

In Iowa the existing penalty provisions are comprised of a combination of (a) clear common law outlawing all strikes by public employees, (b) clear statutory authority for the courts to enjoin them and impose such penalties as may be necessary to achieve compliance and (c) clear authority for the public employer to impose such discipline, including discharge, for serious misconduct as it may choose. (It is also probable that such employees and their organization are liable for damages caused by their strike.) It is submitted that these penalties are all that are needed to achieve deterrence by those aware of the law and quick compliance by those who are unaware of it or willing deliberately to violate it.

The majority's proposal to introduce a "comparative blame" or "clean hands" qualification is most unsound, impracticable and unwise. In the first place, if the strike is illegal, it would not be less so because of some concurrent employer violation. In the hackneyed phrase, "two wrongs do not make a right," and if the public employer has also broken the law, both violations should be restrained and, if necessary, punished. The guilt of neither should serve to reduce that of the other.

Secondly, bearing in mind that the prohibition is for the public's protection, that paramount interest should not be compromised or subject to compromise by some concurrent violation by its administrators.

Finally, the primary defect of the majority's proposal lies in its extension and compounding of the same "crapshooting" and gamesmanship theory underlying its basic proposal to open some exceptions to the present complete prohibition on all strikes in the public service. Especially in the heat and frequent misunderstandings accompanying protracted negotiations, it is at least likely, if not inevitable, for those on both sides to conclude that the only factor preventing settlement (on their terms, of course) is the intransigence and "lack of good faith" on the part of those on the other side. In these circumstances it would be only too easy for misinformed or misguided members of the unit to conclude (or be persuaded) that they have "justifiable cause" to "go out" with assurance that their illegal action will "probably" be condoned or their penalty reduced when the judge "hears the truth" about "those varmints on the other side."

Once more this type of legislation is indeed not only a snare but is also a delusion. The clearly preferable alternative which will most effectively protect the public employee and his organization as well as the public is simply to maintain the pres-

ent complete prohibition on all strikes in public employment and create no opportunities for speculation (or miscalculation) as to the consequences for its violation.

The validity of this position is doubly apparent when it is borne in mind that strikes do not occur "accidentally" or inadvertently. One either goes on strike and stays on strike or he does not. By keeping it that simple and resisting such proposals as the majority's for "fuzzing up" who may strike and under what conditions and with what consequences, we will do a real favor not only to the union leader and the union but also to the individual employee who, under an ambiguous statute, is at the constant hazard of having to make a snap judgment as to whether the "circumstances" are "right" or not when someone else forces him to lay his job on the line by shouting, "Let's go!" If the employee knows it is illegal and will not be excused, his course (or at least choice) of action is simple. People seldom get into great trouble when they know where they stand and are clear about their options.

4. Binding Arbitration of "Future Terms." The voluntarily and mutually agreed procedures recommended by the majority are now readily available from already existing federal and private agencies (such as the Federal Mediation and Conciliation Service and the American Arbitration Association) for utilization under a permissive law.

To the extent the majority's proposal would mandate compulsory resort to such procedures, it would appear likely to be counter-productive since the parties would be tempted on the one hand to rely on such third party "assistance" and intervention and on the other hand to so structure their initial offers as to leave room for compromise at the later stages.

In so far as "fact-finding" (advisory arbitration) is concerned, it seems appropriate to note that its efficacy as a panacea can be seriously overrated. Although binding arbitration has achieved a deserved acclamation and usage in the private sector, the fact is often overlooked that in that sector its utilization is almost exclusively reserved to the resolution of "grievances" (disputes as to the interpretation or application of previously negotiated agreements during their terms). It is almost never acceptable to either party as a mechanism for resolving "future terms" (new contract) issues which are generally left to agreement or resolution by recourse to the "economic warfare" devices of the strike and lockout, neither of which are practicable alternatives in the public sector.

While binding arbitration would be equally as useful for the settlement of grievance disputes in the public sector, it would appear to be most inappropriate in that sector for the determination of economic issues because of its conflict with the basic political practicality (and possible constitutional requirement) that decisions

as to the allocation, appropriation and funding of public funds is a legislative function which can be exercised only by those elected by and responsible to the electorate.

On the other hand, while "fact-finding" leaves the power of final decision with those elected to exercise it, when applied to "future terms" matters it is very likely to become much more complex and hence time consuming and therefore substantially more expensive than is the case when the issue is a single and usually comparatively "simple" question dependent for its resolution on the interpretation of an existing contract. Thus, without intending to minimize the value of fact-finding in appropriate situations, the point here is simply that it will very often prove too costly to be practicable in the settlement of future terms disputes in the public sector.

As indicated above, this minority is strongly of the opinion that, even if there were no serious constitutional questions concerning binding arbitration of future terms issues in the public sector, (and the recent trend seems to be to hold they need not be prohibitive) it would be nonetheless be improvident to allow it, even if the parties were both willing; much less to mandate it. The reason, again, is that to do so would unwisely allow deference to an "outsider," however well trained and informed, of a matter which is intrinsically and inherently political and therefore best resolved by those <u>elected</u> to make it.

A single instance which might appear to warrant an exception would be when the public officers are genuinely uncertain as to what is "right" and satisfied that their constituents would favor (or at least not oppose) their delegation of the "call" to an informed neutral. Even in that case, however, it is maintained that all that is required could be achieved by an advisory opinion which would, at least theoretically, maintain the vital principle of nondelegable legislative authority and responsibility (and might be more than theoretically important if the "recommendation" of the "outsider" were to fall beyond the level the public body believed to be conscionable or acceptable to its electorate).

5. <u>Application to State Employees--Effect on Merit System</u>.

a. <u>Extent of Bargaining</u>. Although it would appear to be an incredible matter over which to have any uncertainty, it has become apparent since the conclusion of the Committee's efforts that there is direct disagreement among its members as to whether or not the <u>compensation</u> of state employees is subject to negotiation! Section 16(2) of the proposed bill is not only structurally defective (in that some words appear to have been omitted) but is in fact virtually unintelligible as to the meaning of its references to "classification" and "reclassification."

The candid explanation for this confusion is simply that

the Committee failed to appreciate the different and considerably greater complexities of bargaining at the state level, failed to get into it soon enough and then ran out of time in which to study and comprehend the present Merit System.

In view of the deferred effective dates provided for state employees, these defects would not be as serious as otherwise. But is is certainly apparent that not only the section but the basic aspects of the question would need to be reconsidered and then intelligibly stated.

b. State Units. A further question concerning state employees is whether there should be only a few units grouped on the functional basis of comparable services performed ("regardless of such employees' geographical location or for which department, board, commission, agency, or institution such services are performed") as stated in Sec. 13(3) or many more units decentralized by the factors rejected.

Under the first alternative, which the majority favored, there would presumably have to be sub-units for handling local and noneconomic issues. Under the latter alternative, elections and noneconomic issues would be handled by the basic units and there presumably would be a coordination among them in preparing for and conducting the relatively small number of negotiations which would be necessary (or appropriate) as to economic matters.

Because the separate localities are where the employees live, associate and work, the decentralized basis seems more appropriate for deciding whether to be represented at all and, if so, the particular noneconomic "conditions of employment" which should be negotiated. From an administrative standpoint it would certainly be preferable that all or most of the organized employees at a particular location be in the same unit and covered by the same agreement than separately represented along functional lines.

The choice involved is broadly comparable to the difference in the private sector between organization and bargaining on the "industrial" basis (by plants or companies) or on the "craft" basis (by occupations within plants). It seems to this minority that the former would generally be more adaptable and preferable in the public sector.

c. Predetermination of Units. In any event, it is believed most unwise (and is certainly novel) to provide, as does Sec. 10(8), for preliminary and apparently binding predeterminations of state units before the patterns of organizational efforts and responses even become apparent.

6. Elections vs. Informal Recognition. The majority (Report #8) has opted for allowing the certification of a bargaining representative not only on the basis of an election but also

informally or "by default" on the basis of employee "authorizations" (not necessarily memberships) if the employer has voluntarily (or inadvertently) failed to challenge the employee organization's claim to majority representation.

Because of the demonstrated unreliability in the private sector of such informal "designations" as true indicators of actual employee desires, it is strongly urged that secret elections be the only basis for certification.

7. Unfair Labor Practices.

a. Failure to Bargain in Good Faith. As noted in Part I above, a major detraction of the "mandatory-comprehensive" system is the virtual necessity it entails, for its implementation and operation, of complex procedures and regulations. A fundamental question is whether those basically opposed to bargaining can be effectively regulated or prosecuted into "good faith" efforts, bearing in mind they are not required to agree or make concessions. If and to the considerable extent the basic viability of the system is dependent on genuine good faith and a true desire to make it work, it is noted that this is the very essence of the voluntary-permissive approach and that the practical effect of the mandatory-comprehensive may be to result in more charges, countercharges and litigation than actual bargaining.

b. Interference, Restraint, Coercion. By the same token, so far as the further unfair practices of "interference, restraint and coercion" are concerned, it is very strongly urged that most Iowa public employees--like most other Iowans--are much less likely to be pushed or pulled from their basic opinions than the over-regulation of the federal statute presupposes. If this is true, the actual result may be more conducive to gamesmanship than actual bargaining.

B. Technical Defects.

1. Docket Priority. It is noted that the provision, in Sec. 8(3), for according priority in court to unfair practice cases appears to be in conflict with at least one other similar provision (Sec. 86.28, dealing with workmen's compensation appeals) in the Iowa Code.

2. Which "request"? It is not apparent whether the "request" referred to in Sec. 11(1)(b) is that in the petition referred to in the first paragraph of Sec. 11 or the one to a public employer referred to under Sec. 11(1)(a).

3. Decertification Petition. It would appear that a decertification petition should not be dismissed or certification withdrawn only where less than thirty percent of the employees wish to be represented, as indicated by Sec. 12(1).

4. Denying Certification. Since the grounds for denying certification in Sec. 12(2) are in the alternative, the periods at the ends of subparagraphs (a) and (b) should be replaced by commas and the latter one followed by the word "or."

5. Joint Recommendation. It is not clear whether the "failure" the public employer must "ajdust. . . through further collective bargaining" in Sec. 17(6) is a failure "to make a good faith effort" or "to obtain the funds." This should be clarified and, in either case, the word "adjust" changed to "discuss."

PART III: THE COMMITTEE: Its Composition, Working Assumptions, Performance and Product.

A. Composition.

Although the Committee was intended to be comprised of, and thus effectively to represent, public employees, public employers and the public, its actual composition did not adequately accomplish those important objectives.

Although "organized labor" was very well represented by individuals with backgrounds and practical experience in collective bargaining, important segments of public employees (e.g., the many state and local civil service and other employees' associations and their members) were not represented at all. And most of those representing the public employers and the public at large were not similarly experienced or prepared to deal with this very complex subject.

Moreover, while the "labor" representatives were generally knowledgable, pre-committed and well organized to the accomplishment of their goals, the others on the Committee were not.

As a consequence, important and basic "management" considerations either received short shrift or were simply "steamrollered."

B. Working Assumptions.

From the beginning and throughout the Committee's deliberations, the majority of its members seemed to this minority to be basing their general philosophy and specific decisions on several basic assumptions which are fallacious:

1. The Prevalence of Mandatory-Comprehensive Legislation. It was frequently suggested that so many other states have adopted mandatory-comprehensive statutes that Iowa is seriously laggard and unfairly disadvantaging its public employees and itself.

Although it is true that many of the states have enacted some law relating to some phases of collective bargaining for some of their public employees, the facts are that many are very limited

and only a very few provide mandatory-comprehensive regulation on anything like the scale proposed by the Majority Report here.

In fact both the number of states which have enacted any legislation and, of those, the number with mandatory-comprehensive legislation on anything like the scale proposed by the Committee majority are susceptible of misunderstanding, exaggeration and misrepresentation.

This is true, first, because of the fact that of those states with some laws, many have several and this has led to an occasional confusion between the total number of laws and the very much smaller number of states which have laws.

Next, even among those states having laws, many have none that are even remotely comparable to what is proposed by the majority here. Some are merely "permissive"; others provide only that public employee organizations may "present proposals" or, while "mandatory," require only that the employer shall "meet and confer" on request with no obligation to reach or seek agreement and no further obligation in case of disagreement.

Still others, while prescribing "negotiations" or "discussions," contain no provisions for further procedures to resolve impasses or make those provided voluntary. Yet others, some of which are quite "comprehensive," are in effect totally premissive in that their application to some or all of the public employers "covered" is subject to "local options" by them.

Another group (including Iowa with its single provision for the compulsory but advisory arbitration of certain fire department disputes) are very narrowly limited in either or both coverage and scope. And, finally, several are not only irrelevant but are really entirely misleading as to any "count" of states or laws concerning provisions for collective bargaining because they are limited, in fact, to restrictions on or total prohibitions of bargaining, strikes, union membership, etc.

Thus it is very important when confronted with "statistical" entries in the "numbers game" as to either the number of laws or states having laws on this subject, to ascertain first which (laws or states) are being counted and then precisely what is included or excluded because, as previously asserted, the number of states having laws at all comparable to that proposed here is very few indeed.

2. The Inevitability and Propriety of Strikes.

a. Strikes Can Be Prevented. It is a common misconception that, irrespective of the philosophical or practical reasons why strikes are improper in the public sector, they are inevitable and therefore must be accommodated and the threat of resort to them

thus allowed to become a part of the bargaining process. This "pitch" is used by some and accepted by others to urge that, whether it wants it or not, Iowa "had better" enact comprehensive legislation or it will face a worse--and more expensive--alternative in the form of increasing illegal strikes.

This is simply unfounded, the fact being that where and when the legislative and executive will has been to refuse to allow or tolerate illegal strikes (or the threat of them) by public employees to succeed, and thus become an operative and effective element in negotiations, that will has been implemented with great success.

As a prime and salient example, in federal employment (under which bargaining is not allowed as to either wages or hours!) strikes are not only prohibited but are a felony. As a consequence, with the single and notable exception of the recent postal "wildcat," they have not occurred. This experience has been matched in many of the states which have decided not to allow or tolerate strikes in their public service.

An obvious source and basis of perpetuation of this particular myth is a misunderstanding (and misinterpretation) of the experiences in several metropolitan states--especially New York--where, despite seemingly stringent prohibitions and seemingly severe statutory penalties, there have been recurrent and apparently "successful" strikes. The vital but commonly unrecognized (because unnoted) fact is that in those situations either (a) the penalties were grossly inadequate or (b) the legislative will was insufficient.

For example, it is commonly remarked that it must be "impossible" to prevent strikes since "Even a fine of $150,000 did not prevent the American Federation of Teachers from striking in New York City!" In fact the striking union there had over 50,000 members and that "tremendous" fine imposed on them was thus less than the cost of a carton of cigarettes each! By contrast, when the "militant" John L. Lewis and his powerful United Mine Workers collided with President Truman in 1948, Judge Goldsborough "got their attention" and ended the strike pronto by the fine of $1,500,000 per day he imposed. In other instances, rather than imposing or enforcing the statutory or (unlimited) common law penalties, "labor oriented" administrators have declined to enforce the law or use the remedies available to them or legislatures have intervened to repeal the statutes or declare retroactive amnesties.

The point is that whether strikes in the public service are considered appropriate or not is a question which can and should be resolved on its own merits and not on the basis of either an irrational and unfounded belief in the myth of their being uncontrollable or an unwarranted over-reaction to the threat of their usage.

b. The Bases for the Right to Strike in the Private Sector Do Not Extend to Public Service. In the private (industrial) sector the right to strike has been (with notable exceptions in cases of strikes by illegal means or for improper purposes) legally protected as the necessary and appropriate resort by organized labor in the resolution of disputes by economic showdowns. In the public sector, however, since the setting of wages requires an expenditure and allocation of public tax funds, the issue is essentially political and simply cannot be resolved by resort to "coercion" which would disrupt the operation of the government itself.

Another valid reason for prohibiting public strikes is that in most instances, unlike most industrial disputes, those served (the public) have no readily available alternative sources for the disrupted services.

For those reasons, it is submitted that the individual who chooses to earn his living in the public service is not in fact "deprived" of the right which is so basic and important to his fellow citizens in private industry. He is (voluntarily) in a "different ball game" which has entirely different rules for completely sound and valid reasons.

It is common for members and leaders of labor organizations in the private sector and many who respect and support their objectives to feel (without understanding and appreciating those fundamental distinctions) that they are duty bound "on principle" to protect and extend the right to strike as a bargaining concept to those who have chosen to serve in the public service. As common as this nonsequitur is, it is nonetheless demonstrably illogical and unsound.

c. Prohibiting a Strike is Not "Involuntary Servitude." A common misconception among laymen (and even some judges) is that a strike cannot practically be enjoined since to do so would require either the unconstitutional penalty of forcing the striker into "involuntary servitude" or, if he remains insistent, in forcing him to perform services against his will. The actually simple and complete answer to this apparent dilemma is that the court's requirement is not that the illegally striking employee choose between returning to work or being punished.

A third alternative is entirely within his control; namely, if he feels deeply and strongly enough about his grievance, to abandon his job. While this alternative may be a hard one and harsh, the sound and logical legal premise on which it is based is simply that he may not continue to claim the job while illegally refusing to perform it. Thus, in fact and in truth, the court is not ordering the illegal striker to return to work but, rather, to end his strike which he can do, at his option, by either returning to work or quitting the job if he is unwilling to perform it.

d. The Threat to Strike is Not a Legitimate "Weapon" in the Public Service.

By the same token, the public employee or employee organization which threatens to strike against a clear legal prohibition (or to force the enactment of legislation) is as plainly and simply resorting to blackmail as if the threat were to bomb public buildings or resort to some other form of rebellion in defiance of any other valid law or court order. Even if the threat were "credible" (which it is not for the reasons stated above) it would not deserve recognition in a democratic society. It certainly should gain no response but the shame it deserves.

For all of these reasons it is submitted that in fact strikes should not be allowed in the public sector and that, if this premise is believed to be sound, they do not need to be allowed. Neither should unwarranted fear of their uncontrollability be the basis for panicking into the enactment of otherwise undesirable and unnecessary mandatory-comprehensive legislation.

C. Committee Performance.

Although the chairman and most of the Committee members labored earnestly in attempting to assemble and assimilate necessary data and background materials, regularly attended numerous meetings and were assisted ably by the staff of the Legislative Service Bureau, the Committee was simply unable adequately to achieve any of its three main goals of study, preparation of a full report and drafting a sound bill.

These failures were due in part to the lack of prior background and experience in collective bargaining by many of the public and employer representatives noted above; in part to the irregular attendance of those most knowledgeable about the merit employment system and, finally, the elapse of the time necessary to complete any of these goals.

As a result, it was necessary in the last few meetings--especially the last one--to try to cover large, important and complex areas "on the gallop," which simply precluded time or opportunity for anything like the necessary discussion or draftsmanship.

D. Work Product.

Because of the aforementioned handicaps, it was not possible to produce a fully considered final report or bill. An interim "Progress Report" was tendered to the Legislative Council but rejected as incomplete. Again, because of time considerations, the different and entirely separate final report has not been considered or adopted by the Committee meeting as a whole. Nor has there been any opportunity for it to be distributed, much less considered or commented upon, by the many important groups not represented on the Committee.

In fact, even at the late date (March 27) of the writing of this Minority Statement, no final draft of the Committee's Report has been received.

In short, both the Report and proposed bill are far from being the results of careful, deliberative committee action. The bill, especially, is a hasty, "pastepot and scissors" product. It is in no sense a "model" bill nor even an adaptation of one. In fact it is the result only of a very hurried and last minute effort. Far from representing anything like a consensus, it was the result of many--often close--compromises and narrow votes.

For these reasons it would be the height of irony to read or regard either it or any of its parts as sacrosanct!

PART IV: RECOMMENDATIONS.

On the bases of the foregoing facts and observations, it is recommended:

A. That No Legislation Is Necessary Now.

Even if a carefully prepared and widely considered bill were available for legislative consideration, it would be unnecessary and unwise to adopt the drastic course of mandatory-comprehensive legislation without an interlude under the now clearly available alternative of voluntarism.

It is unknown at the present time whether and to what extent collective representation is desired by Iowa public employees much less, to the extent it is wanted, that it cannot be accomplished cooperatively and satisfactorily within a permissive framework.

In the meantime it would be precipitous to entangle all of the levels of public employment in the highly structured and formalized pattern of a compulsory law.

The Supreme Court having cleared the way for permissive recognition and clearly approved the common law prohibition against all strikes by public employees by its recent decision in the Regent's case, no legislation at all is necessary for either of those purposes.

B. Authorization of Exclusive Representation Does Not Require A Comprehensive or Compulsory Law.

As noted herein it is by no means a necessary assumption that viable bargaining could not occur on a "members only" basis of representation and it might well be wise to give that alternative an opportunity. If it were concluded, however, that "exclusive represention" would be preferable, it is noteworthy that its authorization is in no way connected to or dependent upon either acompulsory bill

or further comprehensive regulation. It could be achieved by a very simple legislative declaration to that effect.

C. Additional Interim Study is Necessary.

Especially in the light of the limitations noted as to the achievement by the interim study committee of its goals and the lack of opportunity for its final majority and minority reports even to be disseminated, much less to be studied and commented upon by those affected, scholars or even the appropriate legislative committees, it is submitted that at least the minimal interlude necessary for those events and reactions would be purposeful.

It is suggested that an appropriate means for the accomplishment of those goals might be the assignment of them to a special joint interim committee comprised of members of the appropriate standing committees of both Houses of the General Assembly.

If that course (or some alternative) were followed, it is further suggested that those concerned consider these methods which have been used in many of the other states which are confronting the same questions:

--accumulation and reporting of pertinent data, such as the numbers of public employers and their employees, the forms and extent of organization among public employees, etc.;

--widest practicable distribution of the present reports and proposed bill(s) to institutions, organizations and individuals who would be directly affected by such legislation; to organizations, scholars and others with expertise in the fields of personnel relations or public administration; to administrators in those states with existing regulatory agencies in this field;

--requests to those interested or concerned to subject the materials to their own consideration and to present their views in writing or by appearances at scheduled and publicized public hearings.

In addition, it is particularly recommended that the opinions and advice of those closely familiar with the existing state personnel and merit system agencies, laws and policies be obtained.